

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MILES D. PARKISON,

Plaintiff,

v.

PAUL PASTOR, *et al.*,

Defendants.

Case No. C05-5488RBL

REPORT AND
RECOMMENDATION

Noted for January 27, 2006

This matter is before the court because plaintiff has failed to serve his complaint as required by Fed. R. Civ. P. 4. Plaintiff's complaint was filed with the court on or about July 18, 2005. Plaintiff is a county inmate, but he is not proceeding in forma pauperis pursuant to 28 U.S.C. § 1915. Plaintiff was previously informed on more than one occasion that it is his responsibility to serve the defendants named in his complaint. Plaintiff was directed to file proof of service by no later than November 25, 2005, but he has failed to file the required pleadings.

DISCUSSION

FRCP 4(m) requires the complaint to be served within 120 days after filing, otherwise the court may dismiss the action without prejudice. Here, plaintiff has known that he was responsible to properly serve the complaint on the named defendants. Thus, the court does not have any reason to believe plaintiff did not have the time and opportunity to effect service within the proper time frame. The required proof

1 of service was to be completed by November 19, 2005, and plaintiff was required to respond to the court's
2 previous order to show cause by not later than November 25, 2005.

3 CONCLUSION

4 Based on the foregoing discussion, the undersigned recommends that the court dismiss plaintiff's
5 complaint and causes of action without prejudice. Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of
6 the Federal Rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file
7 written objections. *See also* Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those
8 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit
9 imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **January 27, 2006**, as
10 noted in the caption.

11 DATED this 3rd day of January, 2006.

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13 /s/ J. Kelley Arnold
14 J. Kelley Arnold
15 United States Magistrate Judge
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